How Nixon Could Free Conspirators

WASHINGTON — Watergate prosecutors and defense lawyers believe that President Nixon's refusal to turn over tape recordings of Watergate-related conversations amounts to a grant of presidential immunity from prosecution for most of the Watergate conspirators.

The prosecutors and defense lawyers point to four separate constitutional and statutory rights to a fair trial which would be violated if the President refused to turn over the tapes pursuant to a subpoena issued by defense lawyers.

Under the Jencks Act, a defendant is entitled to any relevant "statement or report" by a government witness in the possession of the United States" government.

That would mean, for example, that in any prosecution against John Mitchell, Mitchell would be entitled to tape recorded conversations between the President and John Dean if Dean were to be a government witness against Mitchell.

The alternative to refusing to produce the conversations of a government witness is [illegible] as the latter pointed out [illegible] a material and terminal [illegible] of the prosecution. [illegible]

Ehrlichman or H.R. Haldeman — have a separate right under the Federal Rules of Criminal Procedure to obtain "written or recorded statements by the defendants . . . within the possession of the government."

If the "government" — that is, the President — refuses to turn over the tapes, the law authorizes the judge to void the prosecution.

The third immunity weapon which Nixon has given to the Watergate conspirators rests on a Supreme Court ruling that the government has an obligation to give the defendant any evidence it has which may help to acquit him.

If, as the President states, the tapes prove he had no knowledge of Watergate or the cover-up, then the tapes should also exculpate Mitchell and Ehrlichman from any charges.

The fourth, and perhaps the broadest, argument which the President has given to the Watergate conspirators is a fundamental right under the Constitution to obtain all evidence which is relevant to a criminal defendant — because it substantiates his own testimony or substantiates the testimony of witnesses who appear on his own behalf or discredits the testimony of government witnesses.